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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,358	03/04/2002	David Tumey	VAC.702.US	3855

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LEGAL DEPARTMENT INTELLECTUAL PROPERTY
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EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

DATE MAILED: 09/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/090,358	Applicant(s) TUMEY, DAVID	
	Examiner Melanie J. Hand	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 20, 2005 has been entered.

Response to Arguments

Applicant's arguments, see Remarks, filed December 20, 2005, with respect to the rejection(s) of claim(s) 1-10 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Svedman (U.S. Patent No. 4,382,441).

With respect to **Claim 1**: Svedman teaches a device comprising screen means 11 for placement within a wound bed, sealing means 10 adhered over the screen means and thus also over the wound bed. Conduit 12 fluidly connects said screen means 11 to a vacuum source. A fluid compositional sensing device 16 is placed in the conduit 12 (i.e. between the screen means and vacuum source) and connected to the regulator member 15 of supply conduit 12 which connects said screen means and sensing device 16 with the vacuum source. Sensing device 16 is a capacitive sensor that is capable of sensing compositional characteristics of unfiltered fluid from a wound bed.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Svedman ('441) in view of Overton et al ('846).

With respect to **Claim 2**: Svedman does not teach that sensing device 16 is comprised of a gas chromatograph. Overton teaches a portable gas chromatograph comprising a photoionization detector (col. 12, lines 23-26). Overton teaches that gas chromatographs are commonly used in the art to rapidly identify the contents of gaseous or liquid samples. It would be obvious to one with ordinary skill in the art at the time the invention was made to substitute the sensing device taught by Svedman with a gas chromatograph as taught by Overton in order to rapidly detect microorganisms/infection in the drainage fluids, as such efficiency also allows rapid treatment or alteration of a wound therapy method if needed.

With respect to **Claim 3**: Svedman does not teach a gas chromatograph in optical proximity to a photodiode. A photodiode is a type of photodetector, and since Overton teaches that a detector is a main, known component of a gas chromatograph, and Examiner has stated that it would be obvious to one of ordinary skill in the art to employ a gas chromatograph as a fluid compositional sensing device, it would thus also be obvious to one of ordinary skill in the art to employ a photodiode as a viable detector element for the chromatograph.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Svedman ('441) in view of Lewis et al ('440).

With respect to **Claim 4**: Svedman does not teach that the sensing device 16 comprises a sensor array. Lewis teaches sensor arrays that facilitate detecting more than one condition of, and/or analyte in a fluid, thus facilitating the treatment of a patient or wound site for microorganisms causing infection. Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to substitute the sensor taught by Svedman with the sensor array taught by Lewis so as to detect microorganisms causing infection at a wound site in the drainage fluids.

Claims 5, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Svedman ('441) in view of Henley et al ('109).

With respect to **Claim 5**: Svedman teaches a fluid removal connection 13 but does not explicitly teach that the connection 13 is to a collection canister. Henley teaches a wound treatment apparatus with a bandage assembly that includes a drainage bandage 20, a vacuum source

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fluidically communicating with the drainage bandage 20 via flexible tube 24, a sensing device 172 or 174 and a collection canister (164 or 166). It would be obvious to one of ordinary skill in the art to attach a collection canister to the second end of fluid connection 13, given that such canisters are well known in the art as a means to collect drainage fluid from a wound or surgical site and given that connection 13 is a fluid removal connection.

With respect to **Claim 6**: Please see the rejection of claim 1 in addition to the following:

Svedman teaches a fluid removal connection 13 but does not explicitly teach that the connection 13 is to a collection canister. Henley teaches a wound treatment apparatus with a bandage assembly that includes a drainage bandage 20, a vacuum source fluidically communicating with the drainage bandage 20 via flexible tube 24, a sensing device 172 or 174 and a collection canister (164 or 166). It would be obvious to one of ordinary skill in the art to attach a collection canister to the second end of fluid connection 13, given that such canisters are well known in the art as a means to collect drainage fluid from a wound or surgical site and given that connection 13 is a fluid removal connection.

With respect to **Claim 10**: Conduit 12 fluidly connects said screen means 11 to a vacuum source.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Svedman ('441) in view of Henley et al ('109), as applied to claims 5, 6 and 10 above, and in further view of Scherson et al. ('570).

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With respect to **Claim 7**: The combined teaching of Svedman and Henley does not teach that the sensor is embedded in the screen means 11. Scherson teaches an oxygen- producing bandage with several layers, wherein one of the layers comprise a sensor (col. 4, lines 31-39). Scherson teaches that the sensor can regulate the flow of oxygen to the bandage. Similarly, it would be obvious to one with ordinary skill in the art to embed the sensor taught by the combined teaching of Svedman and Henley in the screen means to effectively monitor the drainage fluid composition or parameters to detect the onset of infection at the wound site.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Svedman ('441) in view of Henley et al ('109), as applied to claims 5, 6 and 10 above, and further in view of Fleischmann ('767).

With respect to **Claim 8**: Svedman teaches a sensing device and a sealing means but does not teach that said sensing device is disposed on the sealing means. Fleischmann teaches a wound treatment apparatus that comprises a sealing means 14 and a sensing device 38 that is disposed on the sealing means 14 and is in contact with a screen means 12 (fig. 1 and col. 4, lines 62-64). Therefore, it is obvious to one with ordinary skill in the art at the time the invention was made to modify the sensor and sealing means taught by the combined teaching of Svedman and Henley such that the sensor is disposed on the sealing means to detect infections in the atmosphere near the wound area as taught by Fleischmann.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Svedman ('441) in view of Henley et al ('109), as applied to claims 5, 6 and 10 above, and further in view of Parker et al. ('391).

With respect to **Claim 9**: Henley discloses a canister and a sensing device outside of the canister but does not disclose a sensing device for sensing infections located in the canister. Parker teaches a fluid monitoring apparatus comprising a canister 22 with a sensing probe 64 mounted inside the canister (col.5, lines 16-21) to monitor parameters of the fluid collected. This provides additional and more accurate means for detecting infection at the wound site as taught by Parker, therefore it would be obvious to one with ordinary skill in the art to provide the invention of the combined teaching of Svedman and Henley with the sensing probe of Parker inside of the canister taught by Henley.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', written over a horizontal line.